

On July 8, 2016, the Court ordered that *pro se* Plaintiffs Fernando Tiburcio, Maria Tiburcio, Jose Delvy Tiburcio Lantigua, and F&M Entertainment, LLC (collectively “Plaintiffs”)¹ show cause as to why this case should not be dismissed for lack of subject matter jurisdiction. (Order, ECF No. 6). On August 12, 2016, Plaintiffs filed a Response. (ECF No. 9).² For the reasons stated herein, the Court will dismiss this case.

On December 18, 2015, Plaintiffs filed their Complaint in this Court pursuant to the Court’s diversity jurisdiction. (*See* Compl. ¶¶ 1–7, ECF No. 1); *see also* 28 U.S.C. § 1332. Plaintiffs allege various state law claims against Defendant Rafael Garcia Perez (“Perez”) including: (1) “theft by deception”; (2) negligence; (3) fraud and misrepresentation; (4) breach

² In addition to a Response, Plaintiffs also filed an Amended Complaint, (ECF No. 8), without leave of the Court. *See* Fed. R. Civ. P. 15(a) (requiring opposing party's written consent or leave of court to amend complaint if twenty-one days have passed since service and no responsive pleading has been filed). However, given the Plaintiffs' *pro se* status, the Court considers the contents of the Amended Complaint in determining whether Plaintiffs have met the amount-in-controversy requirement.

1 of contract;³ and (5) breach of implied covenant of good faith and fair dealing. (Am. Compl.
2 ¶¶ 22–74, ECF No. 8).

3 **II. LEGAL STANDARD**

4 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
5 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case
6 unless the contrary affirmatively appears.” *Stock W., Inc. v. Confederated Tribes of the Colville*
7 *Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). A district court may therefore *sua sponte*
8 raise the issue of subject matter jurisdiction and must dismiss a case if no subject matter
9 jurisdiction exists. Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks
10 subject-matter jurisdiction, the court must dismiss the action.”).

11 **III. DISCUSSION**

12 This Court has original jurisdiction over civil actions: (1) in which the amount in
13 controversy exceeds the sum or value of \$75,000; and (2) which are between citizens of
14 different States. 28 U.S.C. § 1332(a). The jurisdictional amount must be satisfied by each
15 plaintiff in a diversity action. *See, e.g., Zahn v. Int’l Paper Co.*, 414 U.S. 291, 295 (1969). As
16 discussed *infra*, Plaintiffs fail to establish that the amount in controversy exceeds \$75,000, and
17 therefore the Court will dismiss this action.

18 In their Response, Plaintiffs assert that this case satisfies the amount-in-controversy
19 requirement because “damages suffered by Plaintiffs exceeds well over \$75,000.” (Resp. 2:14,
20 ECF No. 9). In support of this assertion, Plaintiffs point to their Amended Complaint which
21 alleges that Plaintiffs paid Defendant “\$12,000 cash for advertising” and “to groom, promote,
22 and put [Plaintiffs’] cousin . . . on . . . radio stations.” (Am. Compl. ¶¶ 14, 25, ECF No. 8). The
23 Amended Complaint also alleges that “Plaintiff has been damages in excess of \$75,000.” (*Id.*
24

25 ³ Although Plaintiffs style their fourth cause of action as “Breach of Implied Covenant of Good Faith and Fair Dealing,” this designation appears to be a typo. (*See* Compl. 8:21, ECF No. 8).

¶ 55). However, Plaintiffs' factual allegations fail to show that the amount-in-controversy requirement is satisfied. Further, conclusory allegations as well as speculative arguments as to the amount in controversy are insufficient. *Singer v. State Farm Mitt. Auto. Ins.*, 116 F.3d 373, 377 (9th Cir. 1997).

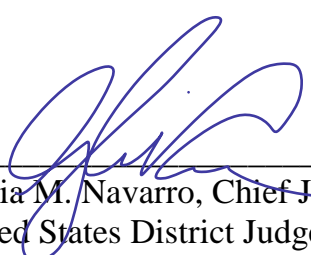
Plaintiffs have therefore failed to satisfy their burden to demonstrate that the amount in controversy exceeds \$75,000.⁴ Accordingly, the Court must dismiss this case. *See* Fed. R. Civ. P. 12(h)(3).

IV. CONCLUSION

IT IS HEREBY ORDERED that Plaintiffs' Complaint, (ECF No. 1), and Plaintiffs' Amended Complaint (ECF No. 8), are **DISMISSED without prejudice** for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Plaintiffs shall have twenty-one days from the date of this Order to file a second amended complaint. Failure to file a second amended complaint by this date shall result in this case being closed.

DATED this 17 day of August, 2016.



Gloria M. Navarro, Chief Judge
United States District Judge

⁴ Because Plaintiffs have failed to carry their burden as to the amount in controversy, the Court need not determine whether complete diversity exists between Plaintiffs and Defendant.